

## § 201.14

## 22 CFR Ch. II (4–1–05 Edition)

(3) Under any ocean or air charter covering full or part cargo (whether for a single voyage, consecutive voyages, or a time period) which has not received prior approval by USAID/W, Office of Procurement, Transportation Division); or

(4) Which are attributable to brokerage commissions which exceed the limitations specified in § 201.65(h) or to address commissions, dead freight, demurrage or detention.

(c) *Inspection services.* USAID will finance inspection of USAID-financed commodities when inspection is required by USAID, or in those cases where inspection is required by the importer and such inspection is specified in the purchase contract, performed by independent inspectors and is either customary in export transactions for the commodity involved or is necessary to determine conformity of the commodities to the contract. Section 228.24 of this chapter covers the nationality requirements for suppliers of inspection services.

(d) *Marine insurance.* (1) Unless otherwise authorized, USAID will finance premiums for marine insurance including war risk on USAID-financed commodities only if:

(i) The insurance is placed in a country included in the authorized Geographic Code: Provided, that if the authorized Geographic Code is any other than USAID Geographic Code 000, the cooperating country itself shall be recognized as an eligible source; and

(ii) Such insurance is placed either in accordance with the terms of the commodity purchase contract or on the written instructions of the importer; and

(iii) Insurance coverage relates only to the period during which the commodities are in transit to the cooperating country, except that it may include coverage under a warehouse-to-warehouse clause; and

(iv) The premiums do not exceed the limitations contained in § 201.68; and

(v) The insurance provides that loss payment proceeds shall be paid in U.S. dollars or other freely convertible currency.

(2) Within the meaning of § 201.11(e), as well as this paragraph, insurance is placed in a country only if payment of

the insurance premium is made to, and the insurance policy is issued by, an insurance company office located in that country.

(e) *Suspension and debarment.* In order to be eligible for USAID financing, the costs of any delivery services must be paid to carriers, insurers, or suppliers of inspection services who, prior to approval of the USAID Commodity Approval Application, have neither been suspended nor debarred under USAID Regulation 8, 22 CFR part 208, nor included on the “Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs” published by the U.S. General Services Administration.

[55 FR 34232, Aug. 22, 1990, as amended at 62 FR 38027, July 16, 1997]

### § 201.14 Eligibility of bid and performance bonds and guaranties.

The cost of any bid bond or guaranty posted by a successful bidder or of any performance bond or guaranty posted by a supplier is eligible for financing under the implementing document, provided that the bond or guaranty conforms to the requirements of the invitation for bids or the contract, as applicable, and to the extent that the principal amount of the bond or guaranty does not exceed the amount customary in international trade for the type of transaction and commodity involved. Bonds or guaranties may be payable in U.S. dollars, or a freely convertible currency or local currency, and shall be posted in favor of the purchaser. Nationality requirements for sureties, insurance companies or banks who issue bonds or guaranties under USAID-financed transactions are set forth in § 228.38(b) of this chapter.

[55 FR 34232, Aug. 22, 1990, as amended at 62 FR 38027, July 16, 1997]

### § 201.15 U.S. flag vessel shipping requirements.

(a) *General requirements.* Unless USAID determines that privately owned U.S. flag commercial ocean vessels are not available at fair and reasonable rates for such vessels:

(1) At least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers from each of two geographic

## Agency for International Development

## § 201.21

areas—the U.S. and all other countries) of all goods financed by USAID which are transported on ocean vessels shall be transported on privately owned U.S. flag commercial vessels; and

(2) At least fifty percent (50%) of the gross freight revenue generated by all shipments of USAID-financed commodities which are transported to the territory of the borrower/grantee on dry cargo liners shall be paid to or for the benefit of privately owned U.S. flag commercial vessels.

(b) *Methods of compliance.* (1) Compliance with these requirements with respect to dry cargo liner vessels shall be achieved for the total of liner shipments made during the term of the loan or grant agreement. If USAID determines at any time during the term of the agreement that compliance may not be achieved, USAID may require that all subsequent shipments be made on U.S. flag liners until compliance is assured.

(2) Compliance with these requirements with respect to dry bulk carriers and tankers shall be achieved for each quantitative unit of cargo. A quantitative unit of cargo is the total tonnage of a commodity or commodities included in one invitation for bids or other solicitation of offers from ocean carriers for the transportation of cargo which may move in full shipload lots. USAID shall approve a charter or other contract of affreightment for a non-U.S. flag vessel only if USAID has determined that at least 50% of the quantitative unit will move on U.S. flag vessels, to the extent that such vessels are available at fair and reasonable rates for such vessels. U.S. flag dry cargo liners whose offers are responsive to the terms of the invitation for bids or other solicitation of vessels may be used for achieving compliance for the quantitative unit.

(c) *Nonavailability of U.S. flag vessels.* Upon application of the borrower/grantee or the supplier, USAID/W, Office of Procurement, Transportation Division, shall determine and advise the applicant whether or not privately owned U.S. flag vessels are available for any specific shipment of commodities at fair and reasonable rates. A determination that U.S. flag vessels are not available does not carry with it the

authorization for USAID to finance freight on a vessel not otherwise authorized; this requires a separate waiver approval in accordance with § 201.13(b)(1)(ii).

(d) *Responsibility.* The borrower/grantee is responsible for compliance with the requirements of this section and for imposing upon subborrowers, contractors and importers such requirements regarding shipping arrangements with suppliers as will assure discharge of this responsibility.

(e) *Privately owned U.S. flag commercial vessels.* For purposes of this section the term “privately owned U.S. flag commercial vessels” shall not include any vessel which, subsequent to September 21, 1961, shall have been either built outside the U.S., rebuilt outside the U.S. or documented under any foreign registry until such vessel shall have been documented under the laws of the U.S. for a period of 3 years.

## Subpart C—Procurement Procedures; Responsibilities of Importers

### § 201.20 Purpose.

This subpart prescribes procurement procedures which shall apply to an importer whenever a commodity procurement is to be financed by USAID subject to this part 201.

### § 201.21 Notice to supplier.

The importer is responsible for providing the supplier with the following information (either through the invitation for bids, the request for quotations or otherwise):

(a) Notice that the transaction is to be financed by USAID under this part 201;

(b) The identification number of the implementing document;

(c) All additional information prerequisite to USAID financing and contained in the instructions from the borrower/grantee to the importer (for example, eligible source of commodity, periods during which deliveries must be made, shipping provisions, and documentation requirements); and, where appropriate,

(d) Notice of the marking requirements in § 201.31(d), when the importer is the government of the cooperating